

## EXHIBIT A

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**From:** Christian Hurt <churt@davisfirm.com>  
**Sent:** Tuesday, February 8, 2022 2:49 PM  
**To:** Govett, Brett; Pohl, Michael; Amy Hayden  
**Cc:** rak\_thermolife@raklaw.com; Cori McGowens; mafenster@raklaw.com; Reza Mirzaie; Robert Gajarsa; Steve Udick; Bo Davis; Greg.Sobolski@lw.com; Javan Johnson; DeBrow, Stephanie; Robinson, Eagle; Culver, Gabriel; Baker, Jackie; Bob Rouder; Saul Perloff; Thompson, Dana; Franklin, Ann; Siegal, Peter B.  
**Subject:** Re: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Brett,

It seems we are at an impasse. We want the injunction to go away and never come back. That is, at root, the relief we are seeking in our Federal Circuit appeal. It is clear you want the injunction to go away just temporarily – apparently to (somehow) undermine the Federal Circuit's appellate jurisdiction – but then you want the ability to bring the injunction right back once the UPNE talks resume. We appreciate you clarifying HumanN's position.

The Federal Circuit has already determined it has jurisdiction. It remanded for the narrow purpose of getting an expeditious ruling on our motion to stay, not for HumanN to seek other relief or delay the resolution of stay motion. Accordingly, ThermoLife will likely seek the Federal Circuit's intervention in light of these new developments. In the meantime, you can inform the district court that we cannot join the relief sought in your purported "cross" motion in light of HumanN's continued intention to reinstate the very same type of injunction in short order. We will reply expeditiously and then inform the court that briefing is complete.

Regards,

Christian

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**From:** "Govett, Brett" <brett.govett@nortonrosefulbright.com>  
**Date:** Tuesday, February 8, 2022 at 10:14 AM  
**To:** Christian Hurt <churt@davisfirm.com>, "Pohl, Michael" <michael.pohl@nortonrosefulbright.com>, Amy Hayden <ahayden@raklaw.com>  
**Cc:** "rak\_thermolife@raklaw.com" <rak\_thermolife@raklaw.com>, Cori McGowens <cmcgowens@raklaw.com>, "mafenster@raklaw.com" <mafenster@raklaw.com>, Reza Mirzaie <rmirzaie@raklaw.com>, Robert Gajarsa <rgajarsa@raklaw.com>, Steve Udick <sudick@raklaw.com>, Bo Davis <bdavis@davisfirm.com>, "Greg.Sobolski@lw.com" <Greg.Sobolski@lw.com>, Javan Johnson <jjohnson@davisfirm.com>, "DeBrow, Stephanie" <stephanie.debrow@nortonrosefulbright.com>, "Robinson, Eagle" <eagle.robinson@nortonrosefulbright.com>, "Culver, Gabriel" <gabriel.culver@nortonrosefulbright.com>, "Baker, Jackie" <jackie.baker@nortonrosefulbright.com>, Bob Rouder <bob.rouder@shearman.com>, Saul Perloff <saul.perloff@shearman.com>, "Thompson, Dana" <dana.thompson@nortonrosefulbright.com>, "Franklin, Ann" <ann.franklin@nortonrosefulbright.com>, "Siegal, Peter B." <peter.siegal@nortonrosefulbright.com>  
**Subject:** RE: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Christian:

Thank you for your email. Our response and cross-motion are a single document. As I mentioned, we were prepared to file that document yesterday—solely as a matter of courtesy in light of your apparent view that that this is an emergency—but despite having asked for it yesterday morning, we still do not have your position on the cross-motion. Accordingly, we will file later today.

Regarding the cross-motion, we cannot agree to the condition you propose. I take it you are opposed to the motion, which, again, seeks an order indicating that if the Federal Circuit were to remand for the purpose, the district court would voluntarily dissolve the same order you are seeking to invalidate on appeal. Please confirm. Thank you.

Brett

**Brett C. Govett** | Partner  
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**NORTON ROSE FULBRIGHT**

---

**From:** Christian Hurt [mailto:[churt@davisfirm.com](mailto:churt@davisfirm.com)]  
**Sent:** Monday, February 7, 2022 8:04 PM  
**To:** Govett, Brett <[brett.govett@nortonrosefulbright.com](mailto:brett.govett@nortonrosefulbright.com)>; Pohl, Michael <[michael.pohl@nortonrosefulbright.com](mailto:michael.pohl@nortonrosefulbright.com)>; Amy Hayden <[ahayden@raklaw.com](mailto:ahayden@raklaw.com)>  
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**Subject:** Re: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Brett,

ThermoLife could likely join the Rule 62.1 motion if HumanN also agrees to not seek such injunctive relief again once UPNE talks resume. Otherwise, the issue remains live, and HumanN's Rule 62.1 motion would be seeking an improper advisory opinion from the district court concerning the Federal Circuit's jurisdictional ruling that already rejected the same mootness argument. Since the Federal Circuit is expecting proceedings on the stay to be resolved expeditiously, we trust your side will file HumanN's response tonight, which is unrelated to ThermoLife's consent to HumanN's newly proposed motion.

Regards,

Christian

**From:** "Govett, Brett" <[brett.govett@nortonrosefulbright.com](mailto:brett.govett@nortonrosefulbright.com)>

**Date:** Monday, February 7, 2022 at 4:49 PM

**To:** Christian Hurt <[churt@davisfirm.com](mailto:churt@davisfirm.com)>, "Pohl, Michael" <[michael.pohl@nortonrosefulbright.com](mailto:michael.pohl@nortonrosefulbright.com)>, Amy Hayden <[ahayden@raklaw.com](mailto:ahayden@raklaw.com)>

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**Subject:** RE: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Christian:

As we've explained, our response to ThermoLife's motion will state our position regarding ThermoLife's requested relief. We believe that the basis for our cross-motion pursuant to Rule 62.1 is straightforward and has already been clearly stated in our briefing before the Federal Circuit and in our prior correspondence to you and your colleagues -- including in Stephanie DeBrow's January 10, 2021 email to Bob Gajarsa. Specifically, in light of Amazon's decision to halt the Neutral Patent Evaluation Process with respect to the '813 patent, the TRO dissolved as a procedural matter, or would have been dissolved if ThermoLife had not filed its premature notice of appeal. At the time we raised this and asked whether ThermoLife had a different view and believed the TRO should remain in place, Mr. Gajarsa responded only that because the "order (Dkt. 88) is already on appeal" HumanN should present its position to the Federal Circuit, which would "determine the proper course." The Federal Circuit has determined that it wants to hear from Judge Albright. And we believe that, consistent with Judge Albright's previous orders, he would have dissolved the TRO following Amazon's December 22, 2021 decision to discontinue its evaluation procedure. With that information, will you agree to the relief sought by the Rule 62.1, or do you intend to oppose? If you believe you need additional information before agreeing or stating that you will oppose, we are happy to meet and confer. However, my availability tonight after 5:00 is limited due to a prior commitment. If you are unable to answer by then, ThermoLife's inability to provide a response will impact the timing of filing our papers (which are not actually due until tomorrow). Please advise. Thank you.

Brett

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**From:** Christian Hurt [mailto:[churt@davisfirm.com](mailto:churt@davisfirm.com)]

**Sent:** Monday, February 7, 2022 3:06 PM

**To:** Govett, Brett <[brett.govett@nortonrosefulbright.com](mailto:brett.govett@nortonrosefulbright.com)>; Pohl, Michael <[michael.pohl@nortonrosefulbright.com](mailto:michael.pohl@nortonrosefulbright.com)>; Amy Hayden <[ahayden@raklaw.com](mailto:ahayden@raklaw.com)>

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**Subject:** Re: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Brett,

Thanks for your message. Given that HumanN believes the preliminary injunction should be dissolved, we trust that there is now no opposition to staying the Order pending appeal. Please confirm as much in your response to ThermoLife's Motion to Stay so that it can be granted expeditiously. Also, please explain the reason that HumanN believes the Order should be dissolved so that we can decide whether to join that motion in part or in full. I'm going to be unavailable for the rest of the afternoon but should surface around 630 PM.

Regards,

Christian

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**From:** "Govett, Brett" <[brett.govett@nortonrosefulbright.com](mailto:brett.govett@nortonrosefulbright.com)>  
**Date:** Monday, February 7, 2022 at 11:32 AM  
**To:** Christian Hurt <[churt@davisfirm.com](mailto:churt@davisfirm.com)>, "Pohl, Michael" <[michael.pohl@nortonrosefulbright.com](mailto:michael.pohl@nortonrosefulbright.com)>, Amy Hayden <[ahayden@raklaw.com](mailto:ahayden@raklaw.com)>  
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**Subject:** RE: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Christian:

As I mentioned last week, HumanN will be responding to your stay motion today. We will also be filing a cross-motion requesting that the Court indicate, under Federal Rule of Civil Procedure 62.1 and Federal Rule of Appellate Procedure 12.1, that it would dissolve the TRO if the Federal Circuit were to order a limited remand for the purpose of doing so. Please let me know your position on that cross-motion, which requests relief that is materially identical to that which you seek in your appeal. Thank you.

Brett

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## NORTON ROSE FULBRIGHT

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**From:** Govett, Brett  
**Sent:** Thursday, February 3, 2022 10:10 AM  
**To:** Christian Hurt <[churt@davisfirm.com](mailto:churt@davisfirm.com)>; Pohl, Michael <[michael.pohl@nortonrosefulbright.com](mailto:michael.pohl@nortonrosefulbright.com)>; Amy Hayden <[ahayden@raklaw.com](mailto:ahayden@raklaw.com)>  
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**Subject:** RE: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Christian:

We do not see a need to formally expedite the briefing schedule, but as a matter of courtesy in light of your apparent desire to do so, we will aim to file on Monday. Thank you.

Brett

---

**From:** Christian Hurt [mailto:[churt@davisfirm.com](mailto:churt@davisfirm.com)]  
**Sent:** Thursday, February 3, 2022 9:02 AM  
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**Subject:** Re: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Brett –

Following up on this. Let me know what HumanN's position is on the briefing schedule. We proposed Friday for a response and Monday for any Reply.

Christian

---

**From:** Christian Hurt <[churt@davisfirm.com](mailto:churt@davisfirm.com)>  
**Date:** Tuesday, February 1, 2022 at 11:03 PM  
**To:** "Govett, Brett" <[brett.govett@nortonrosefulbright.com](mailto:brett.govett@nortonrosefulbright.com)>, "Pohl, Michael" <[michael.pohl@nortonrosefulbright.com](mailto:michael.pohl@nortonrosefulbright.com)>, Amy Hayden <[ahayden@raklaw.com](mailto:ahayden@raklaw.com)>  
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**Subject:** Re: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Brett - we just filed the motion to stay. Let me know on the expedited schedule. We were thinking a deadline of Friday to file a Response and a deadline of Monday to file any Reply.

After you all have had a chance to look at the Motion, let me know HumanN's position.

Thanks,

Christian

Sent from my iPhone

On Feb 1, 2022, at 4:21 PM, Christian Hurt <[churt@davisfirm.com](mailto:churt@davisfirm.com)> wrote:

Brett –

Thanks for the response. We'll shoot to get the motion on file ASAP (ideally tonight) and then send over a proposed schedule so you all can digest it once you've seen the motion.

Christian

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**From:** "Govett, Brett" <[brett.govett@nortonrosefulbright.com](mailto:brett.govett@nortonrosefulbright.com)>  
**Date:** Tuesday, February 1, 2022 at 4:16 PM  
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**Subject:** RE: 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

Christian:

HumanN cannot weigh in on your planned motion without first seeing it. Accordingly, you may represent to the Court that HumanN will set forth its position in its response.

With regard to timing, we are open to accommodating an expedited schedule to the extent it is reasonable and will not interfere with the appropriate presentation and consideration of the issues. When you have a particular schedule to propose, please forward for our consideration.

Thank you.

**Brett C. Govett | Partner**  
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**NORTON ROSE FULBRIGHT**

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**From:** Christian Hurt [<mailto:churt@davisfirm.com>]

**Sent:** Tuesday, February 1, 2022 8:50 AM

**To:** Pohl, Michael <[michael.pohl@nortonrosefulbright.com](mailto:michael.pohl@nortonrosefulbright.com)>; Amy Hayden <[ahayden@raklaw.com](mailto:ahayden@raklaw.com)>  
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**Subject:** 6:21-cv-00144-ADA ThermoLife v. HumanN - Motion to Stay

**[External Email – Use Caution]**

Brett –

ThermoLife will move to stay the TRO (Dkt. 88) per the Federal Circuit's Order from yesterday. I assume that HumanN opposes that relief, but let me know if HumanN's position has changed. In addition, please let me know if HumanN will agree to an expedited briefing schedule. My cell phone number is below to discuss. I'm generally free (except from around 930-1100 AM this morning).

Christian

Christian Hurt  
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